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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

NATIONAL WILDLIFE FEDERATION, *et al.*

Plaintiffs,

v.

NATIONAL MARINE FISHERIES, U.S. ARMY
CORPS OF ENGINEERS, and U.S. BUREAU
OF RECLAMATION,
Defendants.

Civ. No. 01-00640-RE (Lead Case)
Civ. No. 05-0023-RE
(Consolidated Cases)

**SECOND DECLARATION OF
COLONEL GREGG F. MARTIN**
(Injunctive Relief)

COLUMBIA SNAKE RIVER IRRIGATORS
ASSOCIATION, *et al.*,

Plaintiffs,

v.

CARLOS M. GUTIERREZ, *et al.*,

Defendants.

SECOND DECLARATION OF COL. GREGG F. MARTIN

I, Colonel Gregg F. Martin, hereby state and declare:

1. I am the Division Commander of the Northwestern Division of the U.S. Army Corps of Engineers (Corps). I assumed my post here in July, 2005. Prior to my assignment at the Northwestern Division, I served in Heidelberg, Germany as the Deputy Director of Operations for U.S. Army Europe and 7th Army. Before that, I commanded the 130th Engineer Brigade and was the V Corps Engineer in Europe and the Middle East from June 2002 to July 2004. During the first year of Operation Iraqi Freedom in 2003-2004, I commanded an expanded brigade of 13,000 soldiers that provided full spectrum engineer support across Iraq. I am a graduate of the U.S. Military Academy at West Point and have earned Master of Science Degrees in Civil Engineering and Technology Policy as well as a Ph.D. in Construction Engineering Management and Public Policy from M.I.T. I am a graduate of both the Naval and Army War Colleges, holding Masters Degrees in Strategic Studies from both.
2. My current responsibilities include the operation and maintenance of the Corps' congressionally authorized multiple-use projects located in the Columbia River and Missouri River Basins, and support to military construction in thirteen states.
3. The purpose of this declaration is to describe the Corps' planned operation for 2006, which is a modification of the 2004 Updated Proposed Action (UPA) that was considered in the 2004 Biological Opinion on the Consultation on Remand for Operation of the Columbia River Power System and 19 Bureau of Reclamation Projects in the Columbia Basin (2004 BiOp).
4. The 2004 UPA substantially adopted all of the actions contained in the Reasonable and Prudent Alternative of the 2000 Federal Columbia River Power System (FCRPS) Biological Opinion (2000 BiOp). As with the 2000 BiOp, the UPA continued a performance-based

approach, so that as new information became available and knowledge was acquired, actions would change through the adaptive management process. The adaptive management process involves a careful analysis of the new information and a “check” by National Marine Fisheries Service (NMFS) to determine that the new action, taken together with the continuing implementation of all of the other actions, would not likely jeopardize the continued existence of the species or adversely modify the designated critical habitat. Through this adaptive management process, the operations described in the UPA have been revised to reflect the most current scientific information about how to improve salmon survival.

5. Having considered information provided by my staff and information included in Plaintiffs’ proposed operation submitted in their October 31, 2005, filing, for the 2006 juvenile and adult migration season, the Corps projects will be operated in coordination with NMFS, the Bureau of Reclamation and Bonneville Power Administration (BPA) as described below.

Fish Passage Operations: Spill and Juvenile Fish Transport

Spring

6. I plan to implement spring spill operations that will maximize the number of returning adult fish and provide optimum passage conditions, based on the latest information available regarding juvenile and adult fish survival. The spill operations will be from April 3 to June 20, 2006 on the Snake River, and from April 10 to June 30, 2006 on the Columbia River as detailed in the chart displayed below in the column entitled “Corps’ Planned 2006 Spring Operations.” The side-by-side comparison presents the Corps’ spring 2006 operations, operations reflected in the 2004 UPA/BiOp, and operations requested by Plaintiffs’ in their recent motion.

**Comparison of Spring FCRPS Operations Under the Corps' Final Operations Plan, 2004
UPA/BiOp, and Plaintiffs' Motion:**

	Corps' Planned 2006 Spring Operations April 3 – June 20 Snake River April 20 – June 30 Columbia River		2004 UPA/BiOp Anticipated Operations (day/night)	Operations Requested in Plaintiffs' PI Motion (day/night)
Project	Spring Through April 19th and starting June 1 (day/night)	Late Spring April 20 – May 30th (day/night)		
Lower Granite	20kcfs / 20kcfs	0	20kcfs / 20kcfs	20kcfs / 20kcfs
Little Goose	30%/30% (through May 25)	0	0 / 45kcfs	30% / 45kcfs
Lower Monumental	40kcfs / 40kcfs	0	40kcfs / 40kcfs	40kcfs / 40kcfs
Ice Harbor	30%/30% vs 45kcfs/Gas Cap (Through July 21)		45kcfs/Gas Cap	45kcfs/Gas Cap
McNary	40%/40% vs 0 / 150kcfs (Through June 20) 0 / 150kcfs (June 21-30)		0 / 150kcfs	55% / 55%
John Day	0 / 60%		0 / 60%	45% / 45%
The Dalles	40% / 40%		40% / 40%	40% / 40%
Bonneville	100kcfs/100kcfs		75kcfs / 150kcfs	100kcfs / 120kcfs

7. This operation will result in a significant increase in adult fish returns of 10% to 25% over the current BiOp spill/transport operations, and more increases over the Plaintiffs' proposed operations. (*see*, Declaration of Bruce Suzumoto, ¶20).
8. Based on the best scientific information available, the Corps' spring spill regime at Bonneville Dam, which is a modification of 2004 UPA/BiOp operation and differs from the Plaintiffs' proposed operation, will improve juvenile survival. In contrast to the Plaintiffs' proposal, the current scientific information supports continuation of 2004 UPA/BiOp operations at John Day Dam. At McNary Dam, an evaluation of 12-hour BiOp spill versus 24-hour spill is planned. The 24-hour spill volume is less than proposed by the Plaintiffs, but

at a level consistent with spill volumes evaluated in 2005 which would provide for a necessary and appropriate second year of data acquisition (*see*, Fourth Declaration of Rock Peters). In addition, continued research, monitoring and evaluation of the Removable Spillway Weirs (RSW) at Ice Harbor and Lower Granite dams will continue, and an evaluation of different spill levels at Little Goose Dam will be undertaken this spring to provide information on the location of a future RSW. Further description of the spring spill operation for 2006 is contained in the Fourth Declaration of Rock Peters.

Summer

9. I plan to implement summer spill and transportation operations that will spread the risk of impacts and benefits given the great uncertainty about which actions most improve numbers of returning adult fish. The Corps' operations will provide an increase in spill over 2004 BiOp operations, but less spill than the Plaintiffs have proposed. As noted below this operation is based on current biological information and other relevant considerations.
10. There are many relevant factors to consider in structuring summer spill and transport operations. Four are principally important: (1) using a spread-the-risk approach between in-river migration and transportation, with the aim of placing approximately 50% of juvenile migrants in each condition; (2) providing effective passage at the dams; (3) continuing research on dam passage conditions at some locations (12-hour versus 24-hour spill, RSW research, and spill volumes); and, (4) enabling a robust transport versus in-river evaluation as noted below.
11. In order to better understand and reduce the uncertainty concerning the benefits of in-river passage versus transportation of juvenile fall Chinook in the summer, and to be better informed to make decisions in the long-term on summer operation of the collector projects,

the Corps will carry out research to determine effectiveness of transport versus in-river migration. The information currently available does not resolve the question as to whether the best management strategy is in-river migration or transport. (*see*, Second Declaration of John Williams). As Dr. Williams points out, more smolt to adult return information is needed to resolve this critical uncertainty. This will be a multiple year research effort developed in collaboration with the federal, state, and tribal salmon managers. It is my intent to seek independent peer review of the research plan.

12. Considering these factors, I intend to provide summer spill from June 21 to August 31, 2006 in the Snake River and from July 1 to August 31, 2006 in the Columbia River as shown below. Based on information collected in 2005 with the court ordered summer spill operations, we determined, consistent with the conclusions reached by NMFS, (*see*, Declaration of Bruce Suzumoto) that most of the juvenile fall Chinook had passed the Snake River collector projects by the end of July. I therefore intend to work collaboratively with the Tribes and states to develop a methodology for real-time analysis to assess passage timing for each of the collector projects. For the period after August 15th, and in light of this methodology and real time information, I will consider eliminating spill at the lower Snake River and McNary dams when approximately 95 percent of the run has passed each of these projects (*see*, Fourth Declaration of Rock Peters). This will ensure that we are using the limited water resources in the Basin to achieve the maximum benefit for migrants.

**Comparison of Summer FCRPS Operations Under the Corps' Final Operations Plan, 2004
UPA/BiOp, and Plaintiffs' Motion:**

Project	Corps' Planned 2006 Summer Operations June 21 – Aug 30 Snake River July 1 – Aug 30 Columbia River	2004 UPA/BiOp Anticipated Operations (day/night)	Operations Requested in Plaintiffs' PI Motion (day/night)
Lower Granite	18 kcfs / 18 kcfs	0 / 0	21kcfs / 21 kcfs
Little Goose	30% / 30%	0 / 0	30% / 45kcfs
Lower Monumental	17 kcfs / 17 kcfs	0 / 0	35kcfs / 35kcfs
Ice Harbor	30%/30% vs. 45kcfs/Gas Cap (Through July 21) 45kcfs/Gas Cap (July 22 to August 31)	45kcfs / Gas Cap	45kcfs / Gas Cap
McNary	40%/40% vs. 60%/60%	0 / 0	60% / 60%
John Day	30% / 30%	30% / 30%	45% / 45%
The Dalles	40% / 40%	40% / 40%	40% / 40%
Bonneville	75kcfs / 120kcfs	75kcfs / 150kcfs	100kcfs / 120kcfs

Flow Conditions/River Velocity

13. In addition to making the foregoing revisions to our spill program based on current science, I have considered Plaintiffs' request for improved flow conditions and assessed information provided by my staff and NMFS (*see*, Fourth Declaration of Peters and Second Declaration of Williams) regarding the relationship of flow and salmonid survival. I conclude there is no significant new information that warrants altering measures in the 2004 UPA/BiOp relative to flow and velocity; therefore, I intend to continue implementing measures pertaining to flow and river velocities as described in the 2004 UPA/BiOp.

Minimum Operating Pool

14. In recent years the minimum operating pool (MOP) operation of the Snake River projects has been adjusted on a real-time basis to provide the authorized navigation channel depth needed

for safe commercial navigation. The Corps is planning to conduct navigation channel maintenance this winter and I therefore plan to operate these projects as described below.

- As identified in the 2004 UPA/BiOp, the three lower Snake River projects, Ice Harbor, Lower Monumental, and Little Goose, will operate at MOP (with fluctuations up to one foot above MOP elevation) from April 3 until August 31, unless significant numbers of migrants are present, in which case a one or two week extension will be considered based on real time information addressed in the Technical Management Team (TMT). It should be noted that when operating to MOP, or any other defined reservoir elevation, there will be some fluctuation in elevation related to upstream flow changes, wind and wave action, and power generation at the dam (*see*, Third Declaration of Cynthia A. Henriksen).

Lower Granite Dam will operate at MOP (with fluctuations up to one foot above MOP elevation) until the temperature at the Lower Granite forebay is consistently below 68 degrees. This temperature is an indicator that conditions are suitable for fall Chinook migrants and the operation at MOP is no longer necessary (typically September), unless adjustments are required to meet authorized project purposes, notably navigation. As stated above, navigation channel maintenance is planned this winter; however, in the event the scheduled dredging does not occur as planned or unforeseen navigation safety concerns arise related to reservoir elevations, adjustments to operating ranges or the timing of the MOP operation will be coordinated with the TMT.

- Consistent with the 2004 UPA/BiOp, I plan to operate the John Day pool at elevation 262.5 to 264 feet, unless higher elevations are necessary to ensure irrigation needs are met from April 10 to September 30. Any adjustments will be coordinated through the TMT process.

15. Consistent with previous BiOp operations of the mainstem lower Snake River reservoirs at MOP and reservoir elevation flexibility provided therein, and in view of the authorized project purpose of power production, I intend to continue to provide flexibility, within the defined elevation limits, for the FCRPS to provide power reserves and other ancillary services to regional utilities, and to support the reliable operation of the regional transmission system.

Storage Project Operations

16. Protecting the Columbia River Basin from floods is one of my primary responsibilities, and I intend to implement procedures that continue to minimize flood control risk. I will continue the Corps' past practice of calculating end-of month flood control elevations or upper rule curve (URC) for storage projects in the Columbia River Basin, with the objective of operating Corps projects to provide for flood control and flows for salmon and steelhead, as well as Kootenai River white sturgeon, and bull trout (listed resident fish species subject of other Endangered Species Act (ESA) consultations with the U.S. Fish and Wildlife Service). The Plaintiffs' propose meeting biweekly URC elevations, which is not only technically impracticable but also fraught with unintended consequences, including compromising both system and local flood control, and the ability to provide for the improved flow conditions (*see*, Third Henriksen Declaration).

17. I will continue operating Libby and Dworshak dams during the winter at either minimum outflows or releasing additional water consistent with my flood control responsibilities, with the intention of achieving, as practicable, URC elevations from January through April. This will meet the objective identified in the 2004 UPA/BiOp and previous NMFS Biological Opinions, to have as much water available from these projects in April to provide effective

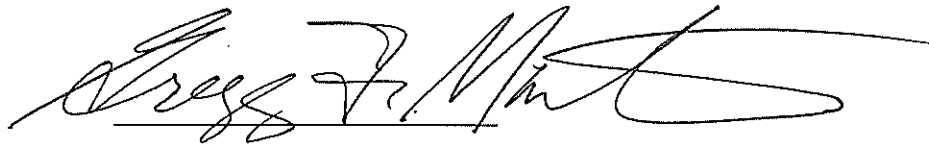
flow conditions for migrating salmon and steelhead. Continuation of this approach assists in reaching the recommended April 10 URC elevation as described in the 2004 UPA/BiOp, while reserving my discretion to make adjustments that in my judgment are necessary to provide for resident and chum fish requirements, power needs, downstream safety, project emergencies, or other unanticipated conditions.

Conclusion

18. Consistent with the principles of adaptive management, the spring and summer 2006 operations described above modify some operations described in the 2004 UPA/BiOp. These modifications are in response to the best scientific information currently available regarding the needs of salmon and steelhead. I have considered information provided by NMFS scientists, analysis and recommendations of my staff, and information submitted by the Plaintiffs, and I conclude that the modifications I have described are consistent with the congressionally authorized project uses, and meet the Corps' responsibilities under the ESA. I have given consideration to my treaty and trust responsibilities to Native American Tribes, and these operations are designed to result in increased returns of adult salmonids with beneficial results to the tribal fishery. I have considered the effect of the operations on water quality and determined these operations are consistent with the Corps' legal obligations under the Clean Water Act. I have also taken into account the Councils' Fish and Wildlife Program pursuant to my responsibilities under the Pacific Northwest Electric Power Planning and Conservation Act.
19. As I implement the operations identified above, I am mindful that unforeseen circumstances and emergencies may arise, which may require that I make adjustments. I will consider each

circumstance and make appropriate adjustments as necessary and, where practicable, seek input from the region's salmon managers through the TMT.

20. Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, based on my education, experience and professional judgment. Executed November 21, 2005, at Portland, Oregon.

A handwritten signature in black ink, appearing to read "Gregg F. Martin", written over a horizontal line.

Gregg F. Martin
Colonel (Promotable), US Army
Division Engineer